IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUMMIT BANK, Successor-in-interest by Acquisition and Merger to Prime Bank	:	CIVIL ACTION
Intervenor	:	
v.	:	
LOCAL UNION NO. 98, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, et al.	:	
and	:	
DeSTEFANO & ASSOCIATES, INC.	:	NO. 00-2990

MEMORANDUM

ROBERT F. KELLY, J. JULY , 2001

The Plaintiffs are Unions or related entities who brought suit against DeStefano Associates, Inc. ("Defendant" or "DeStefano") for failure to make contributions to the various Plaintiffs under a Labor Agreement.

On November 21, 2000, Summit Bank ("Summit" or "Intervenor") was given leave to intervene. On November 29, 2000, Summit filed its Complaint of Intervention.

The matter now before the Court is Summit's Motion for Summary Judgment. The Motion for Summary Judgment alleges the following operative facts which do not appear to be in dispute. Summit is the successor in interest by acquisition and merger to Prime Bank. In 1999,

Prime Bank obtained and perfected a first lien on all of defendant's assets, including but not limited to, accounts receivable. Prime obtained this lien because Defendant pledged all of its assets to Prime as collateral to secure a line of credit issued by Prime to Defendant in the amount of $650,000. Defendant is in default for failure to make monthly payments and also for filing a Petition in Bankruptcy. As a result, Summit is now the assignee of Defendant with respect to all of the Defendant's accounts receivable. For these reasons, and additionally because only Summit has received relief from the Bankruptcy Stay, Summit contends that it is entitled to priority over Plaintiffs in collecting DeStefano's accounts receivable.

In its Complaint of Intervention, Summit contends that some of DeStefano's large accounts receivable have expressed concern that if they pay Summit, they may, nevertheless, be additionally liable to Plaintiffs because of the cause of action set forth in Plaintiffs' complaint against DeStefano. For that reason, they seek the present declaration.

In opposition to Summit's Motion for Summary Judgment, Plaintiffs contend that Pennsylvania's Wage Payment and Collection Law ("WPCL"), 43 P.S. § 260.3(b), sets forth language which appears to establish the existence of a statutorily created express trust between the employers and employees. Plaintiffs go on to argue, that DeStefano is an employer who, as a result of becoming a party to the Collective Bargaining Agreement, agreed to deduct union dues from employees' pay and agreed to pay or provide fringe benefits or wage supplements to the Plaintiffs. Plaintiffs argue further that 43 P.S. § 269.3(b) imposes a statutory duty upon DeStefano to withhold and remit monies due under the Collective Bargaining Agreement. They argue that such money is not an ordinary asset of DeStefano, but represents the property of the employees and is not part of the bankruptcy estate.

The only Statute cited by Plaintiffs in support of this argument is WPCL. Plaintiffs' claims against DeStefano are based on the Employee Retirement Income Security Act ("ERISA" 29 U.S.C. § 101 et seq. and the Labor Management Relations Act ("LMRA"), 28 U.S.C. § 185 et, seq. See Paragraphs 1, 2. 4, 5, 6, 8 and the ad damnum clause of the Complaint. Where a plaintiff seeks relief under either ERISA or LMRA, that Plaintiff cannot also seek relief under the WPCL because of the preemption provisions of ERISA and LMRA. McMahon v. McDowell, 794 F.2d 100 (3RD Cir 1986).

Summit's right of garnishment is not pre-empted by the LMRA or ERISA. Summit is a judgment creditor because DeStefano defaulted on loan payments and there existed no employment relationship between Summit and DeStefano. Although ERISA and the LMRA completely controlled the relationship between Plaintiff and DeStefano, those statutes do not apply to the relationship between Summit and DeStefano and the relationship between DeStefano and the general contractors. There is no provision in either statute that would restrict a creditor of an employer from exercising its right of garnishment.

Plaintiffs next contend that equity warrants the imposition of a constructive trust. The only case cited on this issue by either side is In re: Kulzer Roofing, 139 B.R. 132 (E.D.Pa. 1992). In Kulzer, the Court rejected a request for the imposition of a constructive trust upon unsequestered funds in the possession of the employer where the employer had previously failed to make monthly contributions to employee benefit plans. The present case is factually weaker from plaintiffs' point of view, because the funds at issue in this case are not even in the employer DeStefano's possession. The funds which are in the possession of the general contractors are not segregated or earmarked for the benefit of DeStefano and they bear no relationship to

DeStefano's obligation to make monthly contributions to employee benefit plans.

I find that there is no common law basis for the imposition of a constructive trust upon the unsegregated funds in the possession of DeStefano's general contractors.

Summit is a judicially determined judgment creditor of DeStefano for a liquidated sum. Plaintiffs are merely alleged creditors whose rights have not been judicially determined. In this case, the Bankruptcy Court has given Summit permission to proceed with the garnishment of DeStefano's accounts receivable. The Bankruptcy Court has given no such permission to Plaintiffs. Therefore, Plaintiffs cannot interfere with the orderly administration of DeStefano's bankruptcy case by attempting to prevent Summit from exercising the garnishment rights which it has established in DeStefano's bankruptcy case. Summit is entitled to summary judgment and a declaratory judgment of its priority over Plaintiffs to collect, through garnishment, the accounts receivable of DeStefano.

I, therefore, enter the following Order.

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ORDER

AND NOW, TO WIT, this day of , 2001, the Motion of Intervenor Summit Bank for Summary Judgment against all Plaintiffs for the Second Count of Summit Bank's Complaint is GRANTED. A Declaratory Judgment is hereby entered in favor of Intervenor Summit Bank and against Plaintiffs, Local Union No. 98, International Brotherhood of Electrical Workers; and Thomas J. Reilly, Dennis Link, William Rhodes, Edward Neilson, John Dougherty and Joseph Agresti, Trustees of the IBEW 98 Pension Fund; and Gerald T. Shaeffer, Mary T. Trodden, Harry Foy, Todd Neilson, Eric Truxon, Trustees of the IBEW Vacation Trust Fund; and Robert Rosato, Edward Gilmore, Gerald T. Schaeffer, Edward Coppinger, Harry Foy, John Dougherty, Trustees of the IBEW 98 Health and Welfare Fund; and Bruce Shelly, James Schleiden, Thomas G. Moore, Jr., James Farrow, Kevin McQuillan, William Corazo, Trustees of the IBEW Apprenticeship Training Trust Fund; and Thomas Vasoli, Joseph

Cotumaccio, Lawrence J. Bradley, Harry J. Foy, Ignatius J. Fletcher, Robert J. Kelleher, Trustees of the IBEW 98 Deferred Income Fund; and John M. Grau, Jack F. Moore, Trustees of the National Electrical Benefit Fund, that Summit Bank has priority over all of said Plaintiffs with respect to the collection of the accounts receivable of Defendant DeStefano & Associates, Inc. Contractors who are indebted to Defendant DeStefano & Associates, Inc. and who pay Summit Bank the amount of said indebtedness shall be relieved, released and discharged from any liability to any of the named Plaintiffs herein for payment of the same indebtedness.

BY THE COURT:

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ROBERT F. KELLY, J.